ARIZONA STATE SENATE

Fifty-Second Legislature, Second Regular Session

FACT SHEET FOR S.B. 1389

student; teacher data collection; prohibitions.

Purpose

Establishes various requirements and prohibitions concerning student and teacher data privacy.

Background

The Family Educational Rights and Privacy Act (FERPA) is a federal law enacted in 1974 that addresses the privacy of student education records. Under the law, parents have certain rights to their children's education records and these rights transfer to the student when he or she reaches 18 years of age or attends a school beyond the high school level. Students to whom the rights have transferred are known as *eligible students*.

Parents or an eligible student have the right to review the student's education records kept by a school and request that a school correct records that the parent or eligible student believes are inaccurate or misleading. FERPA applies to any public or private agency or institution that receives funds under any applicable program (U.S. Department of Education). Generally, schools must keep student information private unless they have written permission from the parent or eligible student to release any information from a student's education record.

Schools may disclose student education records, without consent, to the following parties or under the following conditions: 1) school officials with legitimate educational interest; 2) other schools to which a student is transferring; 3) specified officials for audit or evaluation purposes; 4) appropriate parties in connection with financial aid to a student; 5) organizations conducting certain studies for or on behalf of the school; 6) accrediting organizations; 7) to comply with a judicial order or lawfully issued subpoena; 8) appropriate officials in cases of health and safety emergencies; and 9) state and local authorities, within a juvenile justice system, pursuant to specific state law (34 Code of Federal Regulations § 99.31). Education records are records, files, documents, and other materials which contain information directly related to a student and are maintained by an educational agency or institution or by a person acting for such agency or institution (U.S. Department of Education).

The Family Policy Compliance Office (Office) in the U.S. Department of Education addresses complaints and violations. Upon review, the Office issues specific steps an agency, institution or other recipient must take to come back into compliance. The Office can also issue cease and desist orders, withhold payments or terminate funding if an educational agency or institution or other recipient does not come into compliance (34 Code of Federal Regulations § 99.67).

There is not anticipated fiscal impact to the state General Fund associated with this legislation.

Provisions

Written Consent

1. Affirms the parent or guardian is the final authority in all matters concerning the education, health care and mental health of the parent's or guardian's student.

2. Prohibits the access, release or sharing of personally identifiable information, student level data or any information about students without a written explanation of why the information is being requested and for what purposes it will be used.

3. Prohibits the Arizona Department of Education (ADE) and schools from collecting any personally identifiable information on any student or teacher without receiving prior written consent, and only after providing the parent, guardian or teacher with a written explanation of why the information is being requested and for what purpose.

4. Prohibits the state from sharing any student's personally identifiable information with any federal agency or federal personnel or any nongovernment entity, including vendors, contractors and subcontractors, without obtaining prior written consent from the student's parent or guardian.

5. Requires written consent of the parent or guardian before any data collection.

6. Directs ADE and schools to establish procedures to notify teachers, students and parents concerning the rights of teachers, students and parents or guardians under federal and state law.

7. Prohibits governmental entities from discriminating in any manner against a parent, guardian, student or school employee who chooses not to provide prior written consent.

8. Prohibits the State Board of Education (SBE), ADE, school districts and charter schools from purchasing, leasing, renting or using certain hardware or software:
   a) without obtaining prior written consent from parents or guardians and teachers; or
   b) that denies access to parents, guardians or citizens of the state.

Sharing, Collecting and Reporting of Data

9. Prohibits ADE from collecting, and school districts and charter schools from reporting, any of the following individual student level data:
   a) juvenile court delinquency records;
   b) criminal records;
   c) student biometric information;
   d) political affiliation information and voting history of students, siblings of students or parents or guardians of students;

e) information about the religion of students, siblings of students or parents or guardians of students;
f) information about firearm and ammunition ownership or other hobbies of students, siblings of students or parent or guardians of students;
g) information about drug or alcohol use of students, siblings of students or parents or guardians of students;
h) the quality of home students' interpersonal relationships; or
i) mental health screenings and mental health survey data of students, siblings of students or parents or guardians of students.

10. Directs ADE and the Data Governance Commission to develop criteria for the approval of research and data requests from agencies, the Legislature, researchers and the public.

11. States the research and data provided includes student level records with all personally identifiable student level data removed and requires individual student identities to remain confidential in all cases.

12. Prohibits ADE from sharing or transferring any personally identifiable information about any student or teacher with any entity in the state unless that entity is an education agency or institution that will not:
    a) use the data to develop commercial products or services;
    b) share or transfer any personally identifiable information about any student or teacher to any economic or workforce development research or initiative; or
    c) share any personally identifiable information compiled concerning students or teachers with any entity outside this state, except as provided.

Assessments and Data Systems

13. Prohibits a state or national student assessment that collects any type of specified data from being administered.

14. Requires any state or national test used in the state to measure student academic achievement to meet minimal standards specified in a nationally recognized publication concerning educational and psychological testing.

15. Requires the reliability and validity of any norm-referenced achievement test to be established by independent reports in academic journals or independent reports before that test may be adopted or administered in the state.

16. Prohibits ADE and any other state entity from spending any monies, regardless of its source, on the construction, enhancement or expansion of a statewide longitudinal data system designed to:
    a) track students beyond the 12^{th} grade; or
    b) compile personal information that is beyond what is necessary for administrative functions directly related to students' schooling or for evaluation of academic programs and student progress.

17. Restricts access to personally identifiable student data in any current statewide data system to:
    a) the authorized staff of ADE and any of ADE's contractors that require such access;
    b) district administrators, teachers and school personnel who require such access to perform assigned duties;
    c) students and their parents or guardians for their own data; and
    d) the authorized staff of other state agencies in this state as required by law and defined by interagency data sharing agreements.

18. Requires personally identifiable student level data maintained by ADE to remain confidential.

19. Limits ADE to only use aggregate data in public reports or in response to public record requests.

Federal Government

20. Prohibits SBE, ADE, the Data Governance Commission and any political subdivision of the state from sharing personally identifiable information of students and teachers with the U.S. Department of Education.

21. States this prohibition does not apply to the sharing of aggregated data.

22. Directs ADE to require every recipient of a federal grant to do the following:
    a) obtain prior written consent from the teacher or the student's parent or guardian and retain the signed consent form for the duration of the projects; and
    b) provide written notification to the parents or guardians of every student whose data will be shared and to every teacher whose data will be shared.

23. Includes the following in the written notification:
    a) that the recipient of the federal grant may not turn over the student's or teacher's data to the U.S. Department of Education;
    b) that neither the recipient of the federal grant nor any other entity in this state will have control over the use or further sharing of the data;
    c) the contact information, including the telephone number and e-mail address, of the U.S. Department of Education official who demands the data; and
    d) the way in which the data will be used.

Third-Party Contracts

24. Requires ADE to ensure all contracts that govern databases, assessments or instructional supports that include student or redacted data and that are outsourced to private vendors include the following written provisions that specifically:
    a) safeguard student privacy and data security; and
    b) prohibit private vendors from selling student level data or from using student level data in furtherance of advertising, with penalties for noncompliance.

25. Prohibits ADE from sharing any personally identifiable information about any student or teacher with an entity that will use or transfer that information for the development of commercial products or services.

26. Directs a contractor working with student records to agree in writing that it will not disclose such information for the sale of data for any commercial purpose or for any other commercial or noncommercial activity or product.

27. Prohibits contractors from sharing any student's personally identifiable information with any federal agency or personnel without prior written consent from the student's parent or guardian.

Public Notification

28. Directs ADE and the Data Governance Commission to post on the website of the Data Governance Commission, with a link to ADE's website, the following:
    a) the new student level data elements proposed for inclusion in the state student data system;
    b) changes to existing data collection required for any reason, including changes to the federal reporting requirements made by the U.S. Department of Education;
    c) a data inventory and index of data elements with definitions of each data field in the system; and
    d) policies and procedures that comply with FERPA and other relevant privacy laws and policies including policies and procedures that specify that access to personally identifiable student level data is restricted as specified.

29. Includes in the data inventory and index of data elements all of the following:
    a) any personally identifiable student level data required to be reported by state and federal law;
    b) any other personally identifiable student level data that has been proposed for inclusion in the student data system and a statement of purpose or reason for the proposed collection;
    c) any individual student level data that ADE collects or maintains with no stated current purpose or reason; and
    d) a description of the procedures by which a parent or guardian may review the student's records and correct any erroneous information.

30. Directs ADE to develop and post on the website of the Data Governance Commission, with a link to ADE's website, a detailed data security plan that includes all of the following:
    a) guidelines for authorized access to the data system and to individual student level data, including guidelines for authentication of authorized access;
    b) privacy compliance standards;
    c) privacy and security audits;
    d) breach planning, notification and procedures;
    e) data retention and disposition policies; and
    f) data security policies, including electronic, physical and administrative safeguards, such as data encryption and training of employees.

Violations and Penalties

31. Subjects ADE and state agency employees who violate these prohibitions and requirements to termination and prohibition from further state employment.

32. Allows the Attorney General or county attorney to:
    a) serve on the employee or former employee an order requiring compliance; and
    b) assess a civil penalty on the employee of not more than $5,000 for each violation for which the employee may not use public monies or insurance payments to pay.

33. Transmits civil penalties collected from employees to the State Treasurer for deposit in the state General Fund.

34. Imposes a civil penalty of $10,000 for each violation by an organization or entity other than a state agency, school district or educational entity.

35. Terminates the contract of third parties who violate these requirements and prohibitions and prohibits the third parties from entering into any contract in the future with the state or an educational entity in the state.

36. Allows the Attorney General to enforce compliance by:
    a) conducting investigations;
    b) initiating civil actions to seek civil penalties; and
    c) seeking appropriate injunctive relief, including a prohibition on obtaining personally identifiable information for an appropriate time period.

37. Allows the Attorney General to do the following relevant to the inquiry:
    a) subpoena witnesses in accordance with the Arizona Rules of Civil Procedure;
    b) compel the attendance of witnesses;
    c) examine witnesses under oath; and
    d) require the production, examination or audit of any books, records, documents, papers or electronic records.

Miscellaneous

38. States the data and information referred to in this act includes both paper and electronic media, whether stored locally, on the internet or on servers connected to the internet or streamed or projected by, through or from any electronic device or software.

39. Contains a legislative findings clause.

40. Becomes effective on the general effective date.

Prepared by Senate Research
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CB/ls